

SEXUAL ASSAULT VICTIMS' RIGHTS ACT OF  
2013  
TASK FORCE REPORT 2016

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## **EXECUTIVE SUMMARY**

The District of Columbia's commitment to providing the best possible care and services to victims and survivors of sexual assault requires an ongoing assessment of the success of current practices and assessment of the gaps in availability and accessibility of appropriate services to all survivors and victims in our community.

The District of Columbia's vast network of service providers and law enforcement professionals must work together for victims and survivors of sexual assault to ensure that they are receiving timely, respectful, quality care and that the needs and concerns of this population are met and addressed and that they have a mechanism for providing feedback to those professionals entrusted with their care.

## **CHALLENGES**

### ***Victim and Survivor Feedback***

No centralized process exists for victims and survivors to file a complaint or submit feedback about the handling of their case by a sexual assault service provider, law enforcement officers or prosecution. The lack of such a process leaves victims and survivors feeling that they have no voice within the system and may also lead to gaps in services remaining unfilled. The task force recommends that there be a centralized process for submitting complaints and feedback, for reviewing such complaints and feedback and for responding to them and that this process is overseen by the District's Sexual Assault Response Team.

### ***24-7 On-call Advocacy Commitment: Resources and Credentialing***

The District of Columbia currently provides victims and survivors of sexual assault the right to and independent community-based advocate through a 24-7 on-call advocacy response provided by the Network for Victim Recovery of DC. This affords victims and survivors of sexual assault an independent advocate during the hospital medical forensic exam and the law enforcement interview following a sexual assault. Due to an increase in the number of reports to the hospital and law enforcement a need for a larger pool of advocates may exist. In order to guarantee that victims and survivors

receive a consistently high quality of advocacy, the task force recommends that DC adopts advocate credentialing for any new sexual assault response advocates.

### ***Expansion of the Right to an Advocate to the Prosecutorial Interview***

Victims and survivors of sexual assault have the right to receive on-call advocacy with an independent community-based victims' advocate during the hospital exam and the law enforcement interview following a sexual assault, however this right does not extend to the prosecutorial interview. The United States Attorney's Office for the District of Columbia (USAO) has a Victim Witness Assistance Unit for victims and survivors who have a case in process with the USAO. While these system-based advocates provide support to victim and survivors, they are not bound by confidentiality, unlike independent community-based advocates. The task force recommends, in order to provide victims and survivors with the most victim-centered advocacy, that the right to an independent advocate be extended to the prosecutorial interview.

### ***Independent Advocates for Juveniles<sup>1</sup>***

Independent advocates are currently provided to victims and survivors aged 18 years of age and older. These advocates help to ensure that the victims and survivors are provided accurate information about reporting to law enforcement (including their right not to report), and that this decision does not influence their medical forensic care following an assault. In the current system, victims and survivors of sexual assault who are under the age of 18 do not have consistent access to independent, community-based advocates at the time of the medical forensic exam. Additionally, all advocates for minor victims and survivors of sexual assault are currently subject to mandatory reporting requirements in the District of Columbia. This means that an independent community-based advocate is required to report the sexual assault, regardless of the perpetrator or the nature of the offense, to the Child and Family Services Agency

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<sup>11</sup> The Sexual Assault Victims' Rights Amendment Act of 2013 directs this Task Force to determine whether a sexual assault victim advocate should be extended to "juvenile sexual assault victims". Feedback received early in the Task Force process was that the word "juvenile" has a negative connotation and that the service providers who work with youth, prefer other terminology. For the remainder of this Report, this Task Force will use the term "minor victims or survivors of sexual assault" to refer to the population of victims and survivors who are under the age of 18.

(CFSA), regardless of the wishes of the minor victim or survivor of sexual assault. While the minor victim or survivor cannot be forced to cooperate with any law enforcement or CFSA investigation, it is this Task Force's belief that the mandatory response of law enforcement without the right to an independent advocate significantly discourages minor victims and survivors from seeking critical medical care and social services following a sexual assault. It is the recommendation of this Task Force that the right to an independent advocate be extended to minor victims and survivors of sexual assault to ensure that the minor is consistently afforded all of their rights and provided with all of the information that may assist in a self-directed recovery.

## **1. INTRODUCTION**

### **1.1 BACKGROUND**

The Sexual Assault Victims' Rights Amendment Act of 2013 (SAVRAA) Task Force, hereinafter "Task Force", was established by the Sexual Assault Victims' Rights Amendment Act of 2013 on October 8, 2014. This Task Force is the means by which the District of Columbia City Council has established to receive expert recommendations on best practices for the treatment and response to victims and survivors of sexual assault within the District of Columbia.

The Task Force is comprised of statutorily-defined members, and complemented by local and national experts in the area of sexual assault response. The members of the Task Force, as statutorily defined, are:

- Sherelle Hessel-Gordon, Executive Director of the District of Columbia Rape Crisis Center, *representative for the DC Sexual Assault Coalition*;
- Nikki Charles, MA, Co-Executive Director of the Network for Victim Recovery of DC, *representative for the DC SANE program*;
- Michelle Palmer, LICSW, Executive Director of the Wendt Center for Loss and Healing, *representative for the DC Victim Assistance Network*;
- Heather DeVore, MD, Executive Director of DC Forensic Nurse Examiners, *representative for the SART*;

- Jennifer Schweer, LPC, Coordinator, Georgetown Sexual Assault, Relationship Violence, and Stalking Services, *representative for* District of Columbia-based college or university;
- Cortney Fisher, JD, PhD, Deputy Director for Victim Services at the District of Columbia Office of Victim Services and Justice Grants, *representative for* governmental victim services program;
- Nelly Montenegro, Esq., Staff Attorney at the American Bar Association Commission on Domestic and Sexual Violence (formerly Director of Legal Services for Ayuda, Inc), *representative for* underserved populations (foreign-born or immigrant victims/survivors)
- Amy Loudermilk, MSW, Associate Director of Government Affairs (formerly Deputy Director for the Mayor's Office of Gay, Lesbian, Bisexual, and Transgender Affairs), *representative for* underserved populations (victims/survivors who identify as gay, lesbian, bisexual, or transgender)

Members of the Task Force not statutorily defined, but appointed by the Office of Victim Services and Justice Grants due to their local or national expertise in the area of sexual assault response are:

- Robert Alder, Commander of Criminal Investigations Division, Metropolitan Police Department (NOTE: Commander Alder replaced Commander George Kucik in March 2015 after Commander Kucik's retirement from the Metropolitan Police Department);
- Barbra Chikowore, RN, SANE-A, Clinical Educator, MedStar SiTel, forensic nurse and representative for survivors/victims who identify as immigrants;
- Rose Gordy, LICSW, Deputy Director, Safe Shores – The DC Children's Advocacy Center, *representative for* the Multidisciplinary Team/youth and child survivors of sexual violence (NOTE: Ms. Gordy replaced Michele Booth Cole, Executive Director of Safe Shores – The DC Children's Advocacy Center in May 2015);
- Elisabeth Olds, Sexual Assault Victims' Rights Amendment Act of 2013 Independent Expert Consultant;

- Jennifer Pollitt-Hill, MSW, Executive Director, Hope Works (Howard County, Maryland), representative for Violence Against Women Act (VAWA) compliance and national perspective;
- Tonya Turner, Esq., Trial Attorney, Office of the Attorney General, *representative for youth provider community and the prosecutor community*; and
- Laurel Wemhoff, *representative for the victim-survivor community*.

During the course of the Task Force's work, two original members of the Task Force resigned their membership. Those members, who contributed to parts of this report, are:

- Carol Ellis, nationally-recognized expert in law enforcement-based victim services programs;
- Christine Funk, Esq, nationally-recognized expert in the area of forensic sciences and the use of forensic biology in criminal cases.

The primary objective of the Task Force, as defined by statute, is to study nationally recognized best practices and develop recommendations regarding:

- (1) The development and implementation of an effective mechanism for submitting, tracking, and investigating complaints regarding the handling of, or response to, a sexual assault report or investigation by any agency or organization involved in the response;
- (2) Whether a need exists for additional sexual assault victim advocates. If a need is identified, the Task Force shall:
  - (A) Develop criteria to certify sexual assault victim advocates;
  - (B) Create a plan for how the District, in conjunction with nonprofits, can provide additional sexual assault victim advocates to meet the needs identified; and
  - (C) Determine the cost of funding such a plan;
- (3) Whether a need exists to expand the right to a sexual assault victim advocate beyond the hospital and law enforcement interview settings, such as

meetings and conversations with prosecutors. If a need is identified, the Task Force shall:

- (A) Identify where the need exists and to what extent;
  - (B) Make recommendations on how best to fill that need, whether legislatively or otherwise;
- (4) Whether a need exists to expand the right to juvenile sexual assault victims. If a need is identified, the Task Force shall:
- (A) Identify where the need exists and to what extent; and
  - (B) Make recommendations on how best to fill that need, whether legislatively or otherwise.

## 1.2 MEETINGS

SAVRAA Task Force meetings were organized and coordinated by the Office of Victim Services and convened on the second Wednesday of each month beginning in October of 2014. Task Force, meetings were limited to the chartered members for the first several months and then opened to the public on a quarterly basis beginning in May of 2015.

Each meeting was dedicated to a specific assigned topic from the SAVRAA legislation and recommendations were discussed and crafted in the following order:

- 1) Whether a need exists for additional sexual assault victim advocates.
- 2) Whether a need exists to expand the right to a sexual assault victim advocate beyond the hospital and law enforcement interview settings, such as meetings and conversations with prosecutors.
- 3) The development and implementation of an effective mechanism for submitting, tracking, and investigating complaints regarding the handling of, or response to, a sexual assault report or investigation by any agency or organization involved in the response;
- 4) Whether a need exists to expand the right to an advocate to juvenile sexual assault victims.



At the conclusion of each meeting, members were divided into teams and assigned to further research national best practices and present their findings to the group at the following meeting. Additionally, on the question of whether a need exists to expand the right to an advocate to juvenile sexual assault victims, the Task Force formed a working group which met several times outside of regular meetings and elicited the advice of and comments from the public.

## **2. LEGISLATIVE QUESTION 1: PROCESS FOR RECEIVING AND INVESTIGATING COMPLAINTS**

*The Office of Victim Services (“OVS”) shall establish a Task Force to study nationally recognized best practices and develop recommendations regarding: (1) the development and implementation of an effective mechanism for submitting, tracking, and investigating complaints regarding the handling of, or response to, a sexual assault report or investigation by any agency or organization involved in the response*

### **2.1 BACKGROUND**

The introduced Sexual Assault Victims’ Rights Amendment Act of 2013 (SAVRAA) (Bill 20-417) included a provision, in Section 101, which stated that the current powers and duties of the Office of Police Complaints would be amended to permit the board to “where appropriate, monitor and evaluate MPD’s handling of, and response to, complaints of sexual assault.” The interest in expanding the duties and powers of the Office of Police Complaints began with the Human Rights Watch report, as described above, which detailed difficulties from victims and survivors of sexual assault with having their complaints or concerns about their experiences heard by the Metropolitan Police Department in a timely manner. This Task Force has read both the Human Rights Watch report, as well as the subsequent report from Crowell and Moring. This Task Force accepts these documents as critical background to the issue, and has determined to move forward in the development of a complaint process that is victim and survivor-centered.

During the Council hearing on Bill 20-417, which was Chaired by Councilman Tommy Wells on December 12, 2014, twenty-six witnesses (excluding government

witnesses) testified in favor of an “external review process”, “multi-disciplinary case review process” that included the actors in all phases of the sexual assault response, and/or the removal of the process from the jurisdiction of the Office of Police Complaints.<sup>2</sup> Notably, in their own testimony on Bill 20-417, Philip K. Eure, the Director of the Office of Police Complaints testified that this expansion of jurisdiction into the monitoring of sexual assault investigations would expand the universe of investigations for the Office of Police Complaints into “something the OPC does not currently do” and something that Mr. Eure believes “the OPC was never intended to do.”<sup>3</sup> Mr. Eure continued with his testimony indicating that the Office of Police Complaints would need additional resources, including training and expertise in this area, to be able to assume this new role.<sup>4</sup>

The Task Force was assigned the responsibility of developing recommendations on the development and implementation of a mechanism to submit, track, and investigate complaints regarding response to a sexual assault report or investigation *by any agency or organization involved in the response* (emphasis added).<sup>5</sup> The final version of the Bill added to the original introduced draft the inclusion of all other actors, i.e. agencies or organizations, involved in the sexual assault response. In completing our work, this Task Force has interpreted this charge to include any agency or organization that has a role in accepting crisis calls from victims or survivors of sexual assault through any agency involved in the support of the victim or survivor and/or the direct prosecution of the offender charged in the assault of the victim or survivor. Included within the Task Force’s proposed process are the following agencies or organizations: DC Rape Crisis Center (as manager of a sexual assault hotline and provider of mental health services); National Center for Victims of Crime (as manager of a victim services hotline); MedStar Washington Hospital Center (as host site for the DC SANE program); District of Columbia Forensic Nurse Examiners (as the organization that manages the 24/7 on-call forensic nurse program that performs all medical forensic

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<sup>2</sup> See Council of the District of Columbia Committee on the Judiciary and Public Safety Committee Report on Bill 20-417, the “Sexual Assault Victims’ Rights Amendment Act of 2013”.

<sup>3</sup> Id. At p. 11

<sup>4</sup> Id.

<sup>5</sup> Sexual Assault Victims’ Rights Amendment Act of 2013

care for adult<sup>6</sup> sexual assault patients in the District); Network for Victim Recovery of DC (as the organization that manages the 24/7 on-call advocacy response to adult<sup>7</sup> victims of sexual assault); Wendt Center for Loss and Healing (as the largest provider of mental health services for victims of sexual assault); The Women's Center (as a provider of mental health services victims and survivors of sexual assault); Ayuda (as a provider of mental health and language access services for victims of sexual assault); Metropolitan Police Department (as the primary law enforcement agency responsible for the investigation of sexual assault); the United States Park Police (as the other law enforcement agency within the District who has jurisdiction over the investigation of sexual assault); the District of Columbia Department of Forensic Sciences (as the agency who is responsible for processing and analyzing all Physical Evidence Recovery Kits (PERKs); the District of Columbia Office of the Chief Medical Examiner (as the agency who is responsible for processing and analyzing all toxicology samples obtained from the victims and survivors); the United States Attorneys' Office for the District of Columbia (as the prosecutorial agency for adult offenders); and the District of Columbia Office of the Attorney General (as the prosecutorial agency for juvenile offenders).<sup>8</sup> This Task Force has also intentionally included the right of victims and survivors to make a complaint against any of the eight, District-based colleges and universities through this process. Additionally, this Task Force has intentionally included the right of victims and survivors under the age of 18 to make a complaint against an agency or organization involved in the response to their sexual assault. In so doing, this Task Force has added the following agencies or organizations to this proposed process: Safe Shores – The DC Children's Advocacy Center (as the organization that provides advocacy and support to victims and survivors under the age of 18 and their families); and Children's National Medical Center (as the organization that provides medical forensic care and counseling to victims and survivors under the age of 18).

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<sup>6</sup> DC Forensic Nurse Examiners is able to provide medical forensic exams on victims of sexual assault over the age of 12 if they seek a medical forensic exam through MedStar Washington Hospital Center.

<sup>7</sup> The Network for Victim Recovery is able to serve adolescent victims of sexual assault, over the age of 12, if they seek a medical forensic exam through MedStar Washington Hospital Center.

<sup>8</sup> This Task Force has included any agency-based victim services unit in the formulation of this complaint process. Because the unit is ultimately part of the larger agency within which they are housed, this Task Force does not list them separately.

## 2.2 CURRENT STATE

Currently, there is no centralized process to receive and/or respond to complaints or positive feedback regarding any victim's or survivor's experience with the sexual assault process. If a victim or survivor has a complaint or concern with any one agency or organization, it is generally that victim's or survivor's individual responsibility to bring a complaint to the offending agency or organization. Given the psychological and emotional impact of sexual assault, this process can feel overwhelming, re-victimizing, and overly burdensome to a victim or survivor who is managing a post-assault recovery. At this point, the only other option that the victim or survivor has in a complaint process lies with their advocate. The advocate's role in the victim's or survivor's life is to assist them in navigating the response process that the victim or survivor chooses and to advocate for the outcome that the victim or survivor chooses. A well-trained and well-intentioned advocate is always available to assist victims and survivors with filing a complaint with a particular agency or organization and navigating that agency or organization's internal processes. However, this process is not ideal to address systemic change, as it necessarily puts the organization conducting advocacy in a consistently adversarial position to the other agencies or organizations in the response. Setting up an adversarial system between two responding partners will result in negative outcomes for all victims and survivors in the District. Additionally, this reliance on advocates to assist the victim or survivor in bringing complaints necessarily excludes the advocacy organizations from review, as it is unlikely that a victim or a survivor would use their advocate to bring a complaint against the same advocate or organization. This Task Force also takes notice that much of the burden for receiving complaints currently lies with the Office of Victim Services and Justice Grants, who has a very limited ability to respond and no formal mechanism for reviewing or investigating such complaints. This Task Force recognizes the importance of a centralized and multidisciplinary process that will facilitate greater responsiveness and satisfaction for the victims and survivors and increase the sense of justice that victims and survivors feel when they choose to make a complaint.

## 2.3 RECOMMENDATIONS

During the process of making these recommendations, this Task Force took substantial time to debate and balance the desire of the community to see an external and transparent review process, the need for victim and survivor privacy in making a complaint, and the complicated and different employment relationships that are inherent in each agency or organization involved in the sexual assault response. This Task Force proposes the following mechanism for submitting, tracking, and investigating complaints regarding the handling of, or response to a sexual assault report or investigation by any agency or organization involved in the response:

- (1) In response to early feedback from victims and survivors of sexual assault, this Task Force decided that the “complaint” process should be inclusive of all feedback from victims and survivors of sexual assault, both positive and negative. Victims and survivors of sexual assault should be able to provide feedback about the process, the system, and the individuals serving them without it being viewed as a “complaint”.
- (2) This Task Force recommends that this process be available to any victim of sexual assault, age 13 and over, as the victim or survivor defines sexual assault. For victims and survivors who are under the age of 18, a parent or guardian may submit a Sexual Assault Response Feedback (SARF) Form on behalf of the minor. However, nothing in this recommended policy shall be construed to limit the ability of a minor from submitting feedback on their own behalf.
- (3) This Task Force recommends that the Sexual Assault Response Feedback process be available to victims and survivors who choose to remain anonymous and victims who choose to submit feedback through an attorney or advocate acting on their behalf.
- (4) This Task Force recommends that the Sexual Assault Response Feedback process will be managed by the District of Columbia Sexual Assault Response Team (DC SART), as it is statutorily established. The DC SART

shall establish a Feedback Review Committee to process feedback, respond to feedback, and make recommendations to the DC SART on system change based on the feedback received.

*This is an area of proposed legislative change. The Task Force recommends that the DC Council amend the existing legislation to include a Feedback Review Committee (hereinafter “Committee”) in the DC SART and provide that Committee with the authority to review and respond to feedback received through this process. The Task Force recommends that this legislation shall include the authority of this Committee to hold members of the SART accountable to the decisions of the Committee.*

- (5) This Task Force takes notice that a major barrier to victims and survivors making complaints about the process is that the victim or survivor is unaware of what the process should be and/or what their rights are within the process. As a result, this Task Force recommends that victims and survivors of any age who are victims of any crime that has a sexual element should be provided a standard brochure at the point of system entry. This Task Force recommends that this proposed brochure be developed by the DC SART and will be distributed to any organization or agency that may serve as a point of entry into the sexual assault response system. The brochure shall include a detailed description of the sexual assault response process, the victim’s rights as a victim in the process, and the victim’s right to provide feedback to the system through the Feedback Process.

*This is an area of proposed legislative change. The Task Force recommends that the DC Council amend the existing SAVRAA legislation to make distribution of the brochure mandatory by the Metropolitan Police Department Sexual Assault Unit and Youth Division, agencies and organizations that are members of the DC*

*SANE program, and any other member of the SART that may have contact with a sexual assault victim.*

- (6) This Task Force recommends that the Sexual Assault Response Feedback (SARF) forms will be available on the Internet (DC OVS, DC SART website, UASK DC, ASK DC, and the individual websites of all DC SART members), through SmartPhone applications (UASK DC and ASK DC), as well as in paper format. This Task Force recommends that the SARF Form be translated into the following languages: English, Spanish, French, Amharic, Mandarin, Vietnamese, and Korean. Community-based organizations may request translation of the Feedback Form in any other language, free of charge, through the Emergency and Victim Services Interpreter Bank.
- (7) This Task Force recommends that there be a position within the Office of Victim Services and Justice Grants whose job description includes receiving and disseminating all SARF forms, as well as coordinating the response of the DC SART to the SARF form. This will include a fiscal impact to the office of Victim Services and Justice Grants in the form of two additional FTE or the equivalent of two FTE in the form of a consultancy.
- (8) This Task Force also recommends that the DC SART develop relationships with offices within the Mayor's Offices of Community Affairs so that victims and survivors are able to obtain a SARF Form and deliver the SARF Form through those office locations. Please see Addendum A for this Task Force's complete recommendation regarding the receipt and dissemination of the SARF Forms.
- (9) This Task Force recommends that the DC SART make every effort to manage the feedback directly with the representative of the agency or organization that sits on the DC SART. The Task Force believes that the management of feedback at this level, if possible, will reduce the anxiety or

harm to the victim or survivor that is caused by delay in investigation and conclusion of any feedback.

- (10) This Task Force recommends that the process of resolving any complaint lodged by a victim or survivor include subject matter experts, if possible. For example, if a complaint is made by a victim or survivor about a prosecutor, this Task Force recommends that the DC SART identify prosecutors from agencies that are not implicated in the complaint to serve as subject matter experts in the discussions. This Task Force recommends that this process be implemented even if the DC SART has determined that subject matter experts are only available outside of the jurisdiction.
- (11) This Task Force takes substantial notice of the difficulty inherent in an external review or complaint process when there are implications for an individual's employment relationship with an agency or organization. Some agencies or organizations who are members of the DC SART have employees who are members of unions with collective bargaining agreements that are implicated in any disciplinary action that may be recommended by a review body. Other agencies or organizations with membership on the DC SART have employees with licensing requirements. All agencies and organizations with membership on the DC SART maintain unique employment relationships with their staff that may not be infringed upon by an external body. These recommendations make every effort to balance the importance of accountability with each agency's or organization's ability to manage their employees according to their own policies and procedures.
- (12) This Task Force believes that, to the extent practicable, the process of reviewing feedback from victims and survivors should be a transparent process, with public access to the finalized outcomes of the DC SART review committee. However, this Task Force also takes notice that transparency and public access to a complaint and the resolution may act as a barrier for some



victims and survivors who would be otherwise willing to participate in a feedback process. This Task Force believes that the complete process included in Addendum A balances the victim or survivor's interest in privacy with the community's right to information about the sexual assault response process and the manner in which the DC SART is managing feedback about that process.

- (13) This Task Force takes notice that, without legislation granting the DC SART authority over the specific agencies included in the sexual assault response, there will be very limited success in the DC SART's ability to manage a complaint process that is able to require an organization or agency to take any specific action. It is for these reasons that legislation (as described above) is strongly recommended by this Task Force.

The complete draft of the proposed process is attached to this Report as Addendum A.

The proposed feedback form is attached to this Report as Addendum B.

### **3. LEGISLATIVE QUESTION 2: NEED FOR ADDITIONAL SEXUAL ASSAULT VICTIM ADVOCATES**

*The Office of Victim Services ("OVS") shall establish a Task Force to study nationally recognized best practices and develop recommendations regarding: whether a need exists for additional sexual assault victim advocates. If a need is identified, the Task Force shall: (A) Develop criteria to certify sexual assault victim advocates; (B) Create a plan for how the District, in conjunction with nonprofits, can provide additional sexual assault victim advocates to meet the needs identified; and (C) Determine the cost of funding such a plan.*

#### **3.1 BACKGROUND**

The Sexual Assault Victims' Rights Amendment Act of 2013, as introduced by the Council, provided for a sexual assault victim to have the right to a sexual assault victim advocate present at any: (1) Medical, evidentiary, or physical examination; and (2) Interview with law enforcement, prosecutors, or defense attorneys. Additionally, the introduced Bill provided that this advocate shall be summoned prior to the commencement of any initial or subsequent medical, evidentiary, or physical examination arising out of a sexual assault unless the victim declined the presence of such an advocate or the law enforcement official or nurse examiner determined that the victim advocate would be detrimental to the purpose of the interview or the examination.<sup>9</sup> During the hearing on Bill 20-417, held on December 12, 2013, there was overwhelming support for the right of the victim to have an advocate in both medical and law enforcement interviews. Captain Martin Bartness, former Commander of the Baltimore Police Department's Sexual Assault Unit urged the Council to ensure that all sexual assault survivors were provided a right to an advocate. In giving his testimony, Commander Bartness referred to improved quality of investigations when an advocate was present, increased victim satisfaction, and a significant reduction in the number of cases that were unfounded.<sup>10</sup> While the support for a victim's right to an advocate was overwhelming, particularly in medical forensic exams and law enforcement interview, there was caution urged by many of the witnesses who were concerned that expanding the right to an advocate so widely, without a system to credential or train advocates and before expanding the capacity of the current advocates, would be detrimental to both victims and survivors, as well as the investigative process.<sup>11</sup> In revising the introduced Bill, the Council noted concern for the lack of current capacity and funding to expand the right to an advocate past law enforcement and medical interviews. In the Committee Report, the Committee stated, "adding a right to an advocate without considering the capacity of the current provider and without developing a mechanism for training and implementation would undermine the successful existing model and could erode the improvements that the District has

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<sup>9</sup> [Cite to introduced bill]

<sup>10</sup> See Council of the District of Columbia Committee on the Judiciary and Public Safety Committee Report on Bill 20-417, the "Sexual Assault Victims' Rights Amendment Act of 2013" at p. 4.

<sup>11</sup> *Id.*

made in its sexual assault response through the Network for Victim Recovery of DC (NVRDC) program.”<sup>12</sup> As a result of the Council’s concerns, the Sexual Assault Victims’ Rights Amendment Act of 2013 delegates to the Task Force the responsibility of determining whether there is a need for additional advocates and, if so, what the recommendations of the Task Force are in terms of credentialing and training advocates in such a way that would maintain accountability and high levels of collaboration and service to victims and survivors of sexual assault in the District.

### 3.2 CURRENT STATE

The Sexual Assault Victims’ Rights Amendment Act of 2013 provides a sexual assault victim (as defined by the statute) the right to a sexual assault victim advocate<sup>13</sup> at any medical forensic, evidentiary, or physical examination; initial law enforcement interview at MedStar Washington Hospital Center, subsequent in-person interviews with law enforcement related to the sexual assault, and at any point that the victim requests an advocate during the hospital visit.<sup>14</sup> Currently, the Network for Victim Recovery of DC (NVRDC) is the community-based program that employs the advocates who respond, on-call, to MedStar Washington Hospital Center in the event of a sexual assault as part of the DC Sexual Assault Nurse Examiner (DC SANE) program. Unlike in the domestic violence community, the District has no standard mechanism for training sexual assault victim advocates that will then be able to have privileged conversations with the victims and survivors that utilize their services. The current system relies on the professionalism and employee training programs that manage the advocacy function of the sexual assault response process.<sup>15</sup> This Task Force takes note, as does the Council in the Committee Report, that the current advocacy program operated by NVRDC is exceptional. The advocates are professional, well-trained, knowledgeable,

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<sup>12</sup> Id. at p.7

<sup>13</sup> Sexual assault victim advocate is defined as a trained advocate employed by a community-based advocacy organization that is a member of the DC SANE program or its successor program

<sup>14</sup> Sexual Assault Victims’ Rights Amendment Act of 2013

<sup>15</sup> This Task Force takes note that for victims and survivors of sexual violence under the age of 18, Safe Shores – The DC Children’s Advocacy Center is responsible for the training and professionalism of the advocates. As with NVRDC, this Task Force has the highest respect for the training and expertise demonstrated by the advocates employed by Safe Shores – The DC Children’s Advocacy Center. Nothing in these recommendations shall be construed to indicate that this Task Force finds the training, professionalism, skills of the current advocates lacking.

and skilled. Their status as full-time employees of the organization for which they are employed has served the District well in enabling a small core of advocates to develop excellent working relationships with the other partners in the sexual assault response, e.g. forensic nurse examiners, hospital personnel, sexual assault unit detectives, and prosecutors. However, this Task Force also takes note that without a process to institutionalize the high level of advocacy that currently exists, the expertise of the advocates is dependent on one organization and the standards set by that organization's leadership.

This Task Force is deeply committed to ensuring that every victim or survivor of sexual assault in the District is afforded equal rights to information, referral, representation, and support as they navigate his or her recovery, as well as any system of care or justice that the victim or survivor chooses to pursue. This Task Force also takes note that the expansion of rights for any group of individuals comes with it the responsibility to ensure that the rights are meaningful and that every person to whom this right is afforded is granted an equal standard of care. It is not sufficient for this Task Force to recommend that a right be granted without also recommending the process and resources by which the right is able to be fulfilled in a meaningful way. Additionally, it is important to this Task Force that any sexual assault victim advocate that is imbued with the privileges associated with this legislation be accountable to a higher authority, even if that higher authority is an organization with whom there is an employment relationship; it is intended that any sexual assault victim advocate and the organization for whom they are employed be accountable to the DC SART and the proposed Sexual Assault Response Feedback process previously described in this report.

### 3.3 RECOMMENDATIONS

During the process of making these recommendations, this Task Force took substantial time to debate and balance the need to expand access to trained and credentialed advocates past the current medical forensic process, the interest of maintaining a high degree of knowledge, skills, abilities, and professionalism of the sexual assault victim advocacy community, and the importance of being able to ensure

that all advocates are sufficiently trained to be able to negotiate the justice systems within the District. The following are the recommendations of this Task Force:

(1) This Task Force recommends that the right to an advocate for victims and survivors of sexual assault be expanded to those victims and survivors who do not engage in the DC SANE process. However, this Task Force believes that expansion of that right be an iterative process that unfolds over the course of years, as the Office of Victim Services and Justice Grants works with the community to expand the current capacity of advocacy service providers.

(2) This Task Force recommends that the current Sexual Assault Victims' Rights Amendment Act of 2013 *be amended* as follows:

*§23-1909 (b) shall read: "Law enforcement shall ensure that a sexual assault victim advocate is offered to the sexual assault victim prior to the commencement of any in-person interview with the sexual assault victim.*

*(1) If a sexual assault victim chooses to assert their right to a sexual assault victim advocate, the law enforcement officer may only conduct a minimal facts interview with the sexual assault victim before the sexual assault victim consults with a sexual assault victim advocate;*

*(2) If a sexual assault victim declines their right to a sexual assault victim advocate, the law enforcement officer shall: (a) notify the sexual assault victim of their right to request an advocate at any point during the law enforcement process and (b) ensure that the sexual assault victim's decision regarding their right to a sexual assault victim advocate be noted in writing with the victim's signature and the law enforcement officer's signature.*

(3) This Task Force feels strongly that all victims and survivors of sexual assault are entitled to a high-level of professional and evidence-based advocacy, regardless of where or how they enter the system. Therefore,

this Task Force recommends that Council empower the Office of Victim Services and Justice Grants to implement the advocate credentialing structure and timeline that is attached to this Report as Addendum C.<sup>16</sup>

*This is an area of proposed legislative change. The Task Force recommends that the DC Council amend the existing SAVRAA legislation establish an Advocacy Review Board as a committee of the DC SART and provide that Advocacy Review Board with the authority to hold advocates accountable in accordance with these recommendations.*

- (4) This Task Force takes note that the Sexual Assault Victims' Rights Amendment Act of 2013 limits the advocate privilege to a "trained advocate employed by a community-based advocacy organization that is a member of the DC SANE Program or its successor program."<sup>17</sup> The reasoning for this limitation is to ensure that victims and survivors of sexual assault are able to communicate confidentially with their advocate. Confidential communication is not a privilege that can be extended to advocates or victim-witness coordinators who work within a criminal justice system-based agency.<sup>18</sup> This Task Force recommends that the

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<sup>16</sup> In developing the credentialing schema outlined in Addendum C, this Task Force reviewed the following advocate credentialing curricula: Department of Defense Sexual Assault Advocate Credentialing Program, NOVA National Advocate Credentialing Program, OVC Victim Assistance Training Online Program, Florida Victim Services Practitioner Training, North Carolina Victim Service Practitioner Certification Academy, and the Colorado Advocate Certification Program.

<sup>17</sup> Sexual Assault Victims' Rights Amendment Act of 2013

<sup>18</sup> Criminal justice agencies are subject to the "Brady Rule". The Brady Rule, which emerged from *Brady vs. Maryland*, 373 US 83 (1963) requires the prosecution to volunteer to the defense evidence which may be exculpatory to the defense case. This includes all evidence that is favorable and material to the defendant, including statements, oral or written, made by the sexual assault victim or survivor. Victim advocates, victim-witness specialists, or victim-witness coordinators who are a member of the law enforcement or prosecution team may not ever be a confidential advocate for a victim or survivor, as they may be called to testify as a member of the law enforcement or prosecutorial team to statements made by the victim or survivor during the course of the investigation or prosecution.

process of credentialing be extended only to community-based advocates who are able to maintain the victim or survivor's confidentiality.<sup>19</sup>

- (5) This Task Force recommends that the current Sexual Assault Victims' Rights Amendment Act of 2014 *be amended* to extend the privilege of confidential communication to any advocate who has achieved credentialing and who maintains credentialing according to the schema recommended by this Task Force and contained in Addendum C or is employed by NVRDC or its successor program. Proposed language for this amendment is as follows:

*Under §23-1907 (8) and under §14-312(6), the definition of "Sexual assault victim advocate" shall be amended to read: "Sexual assault victim advocate" means:*

- (A) A trained advocate employed by a community-based advocacy organization that is a member of the DC SANE Program or its successor program; or*
- (B) A trained advocate who has reached Basic Certification, as certified by the Office of Victim Services and Justice Grants.*

- (6) This Task Force recommends that the current Sexual Assault Victims' Rights Amendment Act of 2013 *be amended* to require certain common points of entry and contact with the criminal justice and social service system be required to distribute a standard brochure to all victims and survivors of sexual assault at the time that the point of entry becomes aware that the victim or survivor is a victim of sexual assault. This Task Force recommends that the standard brochure, as well as the designation of points of entry required by the statute, be developed by the DC SART.

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<sup>19</sup> This Task Force recommends that while the credentialing process itself be available only to community-based advocates, agency or system-based advocates should be offered the training component of the credentialing process on the same basis as community-based advocates.

*§23-1908 (c) (section added) shall read: “In addition to the rights set forth in Part A of this title, a sexual assault victim: (c) on first contact with a law enforcement officer, has the right to receive notification of their rights as a victim of sexual assault in a brochure as created by the DC Sexual Assault Response Team.*

- (7) This Task Force recommends that the curriculum for credentialing advocates include sufficient information so that credentialed advocates have the knowledge, skills, and abilities to serve minor victims and survivors of sexual assault and that minor victims of sexual assault be included in the proposed legislative change that grants the victim and survivors mandatory access to certain rights upon entry into the system
- (8) This Task Force takes note that this process will incur a significant fiscal note. This Task Force requests that the Council work with the Office of Victim Services and Justice Grants to develop the statement of fiscal impact after the data collection period that is included in the proposed plan. The fiscal impact will be largely determined by the information gathered during this period. However, it is likely that the minimum fiscal impact of expansion will be no less than \$300,000 per year to maintain professional advocates and approximately \$150,000 in the first year to develop the curriculum and credential the advocates. Additionally, there will be a fiscal impact on the Office of Victim Services and Justice Grants in terms of personnel to manage this process

#### **4. LEGISLATIVE QUESTION 3: EXPANSION OF RIGHT TO ADVOCATE BEYOND HOSPITAL AND LAW ENFORCEMENT**

*The Office of Victim Services (“OVS”) shall establish a Task Force to study nationally recognized best practices and develop recommendations regarding: Whether a need exists to expand the right to a sexual assault victim advocate beyond the hospital and law enforcement interview settings, such as meetings and conversations with prosecutors. If a need*



*is identified, the Task Force shall: (A) Identify where the need exists and to what extent; (B) Make recommendations on how best to fill that need, whether legislatively or otherwise.*

#### 4.1 BACKGROUND

The Sexual Assault Victims' Rights Amendment Act of 2013, as introduced by the Council, provided for a sexual assault victim to have the right to a sexual assault victim advocate present at any: (1) Medical, evidentiary, or physical examination; and (2) Interview with law enforcement, prosecutors, or defense attorneys. Additionally, the introduced Bill provided that this advocate shall be summoned prior to the commencement of any initial or subsequent medical, evidentiary, or physical examination arising out of a sexual assault unless the victim declined the presence of such an advocate or the law enforcement official or nurse examiner determined that the victim advocate would be detrimental to the purpose of the interview or the examination.<sup>20</sup> While there was widespread and overwhelming support during the witness testimony for advocates to be present during the medical and law enforcement interviews, particularly those that initiated with the DC SANE process, concerns from the United States Attorneys' Office prompted Council to reserve the question of whether advocates are appropriate in prosecutorial or defense interviews for further deliberation of the Task Force.

#### 4.2 CURRENT STATE

Pursuant to the Sexual Assault Victims' Rights Amendment Act of 2013, victims and survivors of sexual assault in the District of Columbia have the right to an independent advocate at the point of the medical forensic exam, for initial law enforcement interviews, and for any subsequent interviews by law enforcement. Through DC SART protocol, an advocate is dispatched to MedStar Washington Hospital Center within one hour of the call for service. The advocate is present with the victim or survivor during the medical forensic exam and during the law enforcement interview if the victim so chooses. The Network for Victim Recovery of DC (NVRDC) houses the on

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<sup>20</sup> Sexual Assault Victims' Rights Amendment Act of 2013, *as introduced*

call advocates that respond to the hospital 24 hours a day, 7 days a week as part of the MedStar response.

Presently, victims do not have a legal right to an independent advocate during the prosecutorial interview. The United States Attorney's Office for the District of Columbia (USAO) employs victim-witness assistance specialists that coordinate services and care for victims on behalf of the USAO. The victim-witness coordinators, while exceptionally well-trained, are not bound by confidentiality and are legally obligated to report anything that may be material to the case. The prosecutor then has the duty, under *Maryland vs. Brady*, to report that information to the defense counsel. This is in contrast to the independent advocates who have the ability to maintain confidential communications with the victim or survivor.

#### 4.3 RECOMMENDATIONS

This Task Force recommends unanimously that the Sexual Assault Victims' Rights Amendment Act of 2013 *be amended* to expand the victim or survivor's right to an advocate to any prosecutorial interview. While the USAO has, in the past, allowed advocates to accompany their clients to prosecutorial meetings when the victim has requested, it is not a legal right at this time. This Task Force recommends strongly that this right be included as a victim or survivor's right.

- (1) This Task Force recommends that any sexual assault victim or survivor be offered the right to have a sexual assault victim advocate present during any prosecutorial interview, other than an interview conducted during a grand jury proceeding.
- (2) This Task Force takes notice of the concerns, raised by prosecutors, that the presence of an advocate may be detrimental to the interview and investigatory process. In recognition of this concern, if after an interview begins, a prosecutor believes that the presence of an advocate in a particular case is proving detrimental to their investigation, the prosecutor shall call the advocate's supervisor and discuss the removal with the

supervisor. The prosecutor must provide a substantive, detailed, case specific reason for the removal.

- (3) This Task Force recommends that the role of the Independent Expert Consultant be extended through Fiscal Year 2018 for the purpose of reviewing the process of allowing advocates in interviews outside of the DC SANE process, and reviewing data related to this practice. A review of this process shall include the following points of data: (a) how many cases and how many interviews included the presence of an advocate (law enforcement and prosecution), (b) the reasons that advocates have been asked to leave, if any.
- (4) This Task Force recommends that the Sexual Assault Victim's Rights Amendment Act of 2013 should *be amended* as follows:

*Under §23-1908 (a): In addition to the rights set forth in Part A of this title, a sexual assault victim shall have the right to have a sexual assault victim advocate present at any: (5) Initial interview with a prosecutor, or agent thereof, related to the sexual assault; and (6) Subsequent in-person interview with a prosecutor or agent thereof related to the sexual assault.*

*[New section] §23-1909 (c) shall read: "A prosecutor shall ensure that a sexual assault victim advocate is offered to the sexual assault victim prior to the commencement of any in-person interview with the sexual assault victim.*

*(1) If a sexual assault victim chooses to assert their right to a sexual assault victim advocate, the prosecutor or agent thereof may only conduct a minimal facts interview with the sexual assault victim before the sexual assault victim consults with a sexual assault victim advocate;*

*(2) If a sexual assault victim declines their right to a sexual assault victim advocate, the prosecutor or agent thereof shall: (a) notify the sexual assault victim of their right to request a community-based advocate at any point during the prosecutorial process and (b) ensure that the sexual assault victim's decision regarding their right to a sexual assault victim advocate be noted in writing with the victim's signature and prosecutor's, or agent's, signature.*

*[New section] §23-1909 (d) shall read: "In any case in which the prosecutor believes that the presence of the sexual assault victim advocate would be detrimental to the sexual assault victim's well-being or the prosecutor's ability to perform their duties, the sexual assault victim advocate can be asked to leave after: (1) the prosecutor or the prosecutor's agent discusses the reasons for the removal of the victim advocate with the victim advocate's supervisor; (2) the reasons for the removal are discussed with the supervisor in case-specific detail; and (3) that case is submitted to the DC SART for case review.*

*[New section] §23-1909 (e) shall read: "The rights under this section shall take effect following approval by the Mayor (or in the event of a veto by the Mayor, action by the Council to override the veto), no later than October 1, 2018.*

**5. LEGISLATIVE QUESTION 4: EXPANSION OF RIGHT TO ADVOCATE TO JUVENILE VICTIMS OF SEXUAL ASSAULT**

*The Office of Victim Services ("OVS") shall establish a Task Force to study nationally recognized best practices and develop recommendations regarding: Whether a need exists to expand the right to juvenile sexual assault victims. If a need is identified, the Task Force shall: (A) Identify where the need exists and to what extent; and (B) Make recommendations on how best to fill that need, whether legislatively or otherwise.*

## 5.1 BACKGROUND

The Sexual Assault Victims' Rights Amendment Act of 2013, as introduced by the Council, provided for a sexual assault victim to have the right to a sexual assault victim advocate present at any: (1) Medical, evidentiary, or physical examination; and (2) Interview with law enforcement, prosecutors, or defense attorneys. Additionally, the introduced Bill provided that this advocate shall be summoned prior to the commencement of any initial or subsequent medical, evidentiary, or physical examination arising out of a sexual assault unless the victim declined the presence of such an advocate or the law enforcement official or nurse examiner determined that the victim advocate would be detrimental to the purpose of the interview or the examination.<sup>21</sup> In the originally introduced legislation, the right to an advocate extended to all victims and survivors of sexual assault, regardless of age or type of assault. Victims and survivors of felony and misdemeanor assaults were included in the originally introduced legislation, as well as victims of all ages. During the testimony on the introduced Bill, held on December 12, 2014, witnesses urged Council to reserve the question of advocacy for minor victims of sexual assault for further deliberation by this Task Force.

## 5.2 CURRENT STATE

Currently, the sexual assault response system in the District of Columbia is bifurcated based upon the age of the victim or survivor. For victims or survivors who are 18 years old or over, the system of response is managed by the DC Sexual Assault Response Team.<sup>22</sup> For victims or survivors who are younger than 18 years old, the system of response is managed by the District's Multidisciplinary Team.<sup>23</sup> Both systems are statutorily established, both are multidisciplinary, but each have different actors.

For the adult population, a request for medical forensic care is made through MedStar Washington Hospital Center and the DC Forensic Nurse Examiners, who employ nurses that are certified by the International Association of Forensic Nurses as

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<sup>21</sup> Sexual Assault Victims' Rights Amendment Act of 2013, *as introduced*

<sup>22</sup> Sexual Assault Victims' Rights Amendment Act of 2013

<sup>23</sup> [Cite to legislation establishing the MDT]

“SANE-A”.<sup>24</sup> When a medical forensic exam is requested by the victim or survivor, DC SART protocol dispatches an advocate employed by the Network for Victim Recovery of DC. That advocate meets the victim or survivor at the hospital and remains with the victim or survivor throughout the victim or survivor’s case or recovery period.

For the child and adolescent population, the request for investigation or medical forensic care flows through the Child and Family Services Agency, Metropolitan Police Department Youth Division, Children’s National Medical Center, or Safe Shores – The DC Children’s Advocacy Center. The medical forensic care is provided by Children’s National Medical Center, who employ nurses that are certified “SANE-P” and physicians.<sup>25</sup> Safe Shores, the District’s Child Advocacy Center, acts in the role of the advocacy provider for the child and adolescent victim and survivor population, but the role of Safe Shores is different than the role of the Network for Victim Recovery of DC for several reasons. First, because of the victim’s age, often the advocate works with the non-offending caregiver or parent as opposed to the child victim themselves. The role of the advocate currently begins when the investigation begins either through DC Child and Family Services or MPD, as opposed to adults who are connected with an advocate when they access medical forensic care prior to the police being notified or involved. Caregivers and minor victims and survivors of sexual assault still have the right to refuse to talk to police, as well as receive medical care, participate in forensic interviews, or receive advocacy services when they are offered. Similarly, they could refuse forensic care (medical and interviews) that are part of the investigation but still participate in advocacy and mental health services. However, currently there is no advocate present prior to the initiation of an investigative process to advise caregivers or child victims of these options or of their rights under VAWA to receive medical forensic care free of charge, separate from a report to law enforcement.

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<sup>24</sup> The International Association of Forensic Nurses “SANE-A” certification authorizes the forensic nurse to perform medical forensic exams on adult and adolescent victims or survivors of sexual assault. Adolescent victims and survivors of sexual assault are defined as those victims or survivors who are 13 years of age or older. Nurses may test for a SANE-A certification only after working for two years performing exams.

<sup>25</sup> The International Association of Forensic Nurses “SANE-P” certification authorizes the forensic nurse to perform medical forensic exams on pediatric and adolescent victims and survivors of sexual assault.

**Mandatory reporting.** Under DC Code §4-1321.02, all members of the existing Sexual Assault Response Team and Multidisciplinary Team are mandated reporters for any child under the age of 18 who has been or is in danger of being a victim of sexual abuse or attempted sexual abuse, regardless of the age of the offender. Under current law, any advocate would be required to report a disclosure of sexual abuse of a child under age 18 to the DC Child Abuse Hotline, potentially triggering a law enforcement investigation. This requirement significantly alters the nature of the advocate/victim relationship, particularly in cases involving minor victims and survivors of sexual assault aged 13 to 17 who are seeking a confidential way to obtain information about their health and help talking to their parents. In interviews with youth, ages 14 to 17, fear of parental involvement and mandatory reporting was the primary barrier cited preventing a minor victim or survivor of sexual assault from seeking assistance.

### 5.3 RECOMMENDATIONS

This Task Force unanimously supports the right of minor victims to an independent, community-based advocate and strongly believes that the advocate should be provided within a protocol tailored to the role of the perpetrator in the victim's life and the age of the victim.

This Task Force recommends that the role of the sexual assault victim advocate shall include, but not be limited to: (a) providing information to the minor victim or survivor about their rights under the Violence Against Women Act, as reauthorized in 2013 to receive a medical forensic exam free of charge and without reporting to law enforcement; (b) notify the minor victim or survivor of the mandatory reporting requirements of each actor in the system; (c) notify the minor victim or survivor of the right to refuse to participate or engage with law enforcement should the case be reported by a mandatory reporter; (d) help the minor victim or survivor and his or her family navigate the system(s) regardless of the status of a criminal or civil case; (e) help the minor victim or survivor and his or her family access resources such as counseling, appropriate follow up medical care, housing, economic support, family intervention and independent living support as needed; and (f) advocate with various institutions and

people in the lives of the minor victim or survivor to ensure that their safety plan is implemented regardless of whether they reported to law enforcement.

- (1) This Task Force recommends the following set of classifications for minor victims and survivors of sexual assault:
  - (a) For minor victims and survivors who are aged 0-11, both where there is peer-to-peer sexual violence or violence perpetrated by a parent, caregiver, or individual in a position of authority to the minor, the minor victim or survivor of sexual assault shall have the right to an advocate in the same manner and method that the minor victim or survivor (and the minor victim's or survivor's family) are provided advocacy through the current configuration of the statutorily established Multidisciplinary Team and Safe Shores - The DC Children's Advocacy Center.
  - (b) For minor victims and survivors of sexual assault who are aged 12-17, and are the victim or survivor of sexual abuse perpetrated by a parent, caregiver, or individual in a position of authority to the minor victim or survivor, the minor victim or survivor shall have the right to an advocate in the same manner and method that the minor victim or survivor (and the minor victim's or survivor's family) are provided advocacy through the current configuration of the statutorily established Multidisciplinary Team and Safe Shores – The DC Children's Advocacy Center.
  - (c) For *both* minor victims and survivors aged 12-17 who are the victim or survivor of peer-to-peer sexual violence<sup>26</sup> and for minor victims and survivors aged 12-17 who are the victim or survivor of sexual violence committed by a stranger or by someone who does not have

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<sup>26</sup> In this context, peer to peer sexual violence is defined as someone who is within a 4 year age gap relative to the youth victim/survivor whether committed by a person who is a stranger, or committed by someone who does not have a significant relationship to the youth victim or survivor



a significant relationship to the minor victim survivor but is more than 4 years older than the victim or survivor, those minor victims or survivors shall be provided with ***an independent, community-based advocate*** using a model of vertical advocacy established by SAVRAA ***prior to any substantive, investigatory conversation*** with hospital-based personnel, law enforcement, Child and Family Services Agency, or prosecutorial authority. *This provision shall not be construed to limit hospital-based personnel or law enforcement from gathering information for the purpose of providing time-sensitive, emergency or triage care to the victim.*

- (2) This Task Force recommends that a youth-oriented hotline be established, or included in an existing hotline, to provide information anonymously to minors ages 12-17 about their legal rights, mandatory reporting requirements of various system actors, the details of the law enforcement reporting process, age appropriate and Violence Against Women Act-compliant access points for medical care, counseling, and law enforcement assistance, as well as the details of parental notification laws in the District. This Task Force additionally recommends that the hotline must provide a “warm” hand off, i.e. a direct and personally introduced link to a community-based advocate who is available to meet in-person with the minor victim or survivor to provide the following information, regardless of the status of the case or report to law enforcement:
  - (a) Information about the system of care available to the minor victim or survivor and the youth victim’s or survivor’s rights under the Violence Against Women Act;
  - (b) A general outline of the civil and criminal legal remedies available to youth victims and survivors;
  - (c) The minor victim’s or survivor’s right of accompaniment to a medical forensic exam and any other portion of the process as desired by the minor victim or survivor;

- (d) Information and assistance regarding the minor victim's or survivor's ability to inform or speak with parents or other adults in the minor victim's or survivor's life, if desired by the minor victim or survivor;
  - (e) Information about creating and periodically amending a safety plan with the minor victim or survivor;
  - (f) Information about the minor victim's or survivor's rights in the school system;
  - (g) Referrals to counseling services that are appropriate to the minor victim or survivor;
  - (h) Information about logistical challenges that the minor victim or survivor may face, such as transportation, school attendance, and other safety planning issues;
  - (i) Advocacy in, and assistance with, any benefits or financial supports available;
  - (j) Any other advocacy needs identified by the sexual assault victim advocate and the minor victim or survivor.
- (3) This Task Force recommends that the community-based advocates working with minor victims and survivors be credentialed in accordance with the process of advocate credentialing described above and be adequately trained in the following areas:
- (a) The sexual assault system of care for minor victims and survivors;
  - (b) Civil and criminal legal remedies for sexual assault and dating violence that are available to minor victims and survivors; and
  - (c) The rights of the minor victim or survivor under the Violence Against Women Act.
- (4) This Task Force recommends that community-based advocates who certified to work with minor victims and survivors of sexual assault by the above-referenced advocate credentialing process be exempt from mandatory reporting for cases of peer-to-peer sexual assault for minor

victims and survivors of sexual assault who are aged 14-17 years old. This Task Force takes significant notice of the competing interests and concerns in eliminating a requirement for mandatory reporting. However, this Task Force also takes significant notice of the extensive published research, as well as focus group research that was gathered during the deliberations of this Task Force, indicating that minor victims and survivors of sexual violence perceive that mandatory reporting laws will limit their ability to have control over their recovery. This Task Force believes that the mandatory reporting laws, as currently written and enforced, are a significant barrier to minor victims and survivors seeking any assistance in the aftermath of sexual violence.

This Task Force further recommends that the exemptions to the mandatory reporting statute for this limited sub-group of victims and survivors not include situations in which there is an immediate or exigent risk of harm to the minor victim or survivor of sexual assault if the report to law enforcement is not made.

- (5) This Task Force recommends that Physical Evidence Recovery Kits (PERKs) shall be made available to providers at Children's National Medical Center, independent of the Metropolitan Police Department's involvement with the minor victim or survivor. This provision is required to ensure that the medical forensic program at Children's National Medical Center maintains compliance with the Violence Against Women Act, as reauthorized in 2013.
- (6) The Task Force recommends a planning and implementation phase to ensure that these recommendations are appropriately implemented. This Task Force further recommends that the Office of Victim Services and Justice Grants extend the contract for the Independent Expert Consultant so that the Independent Expert Consultant can monitor the implementation

of these recommendations and any amendments to the Sexual Assault Victims' Rights Amendment Act of 2013 that may emerge from this report.

Monitored outcomes of this implementation shall include:

- (a) Number of Physical Evidence Recovery Kits (PERKs) collected with and without report to, or participation with, a report to law enforcement;
- (b) Number of Physical Evidence Recovery Kits (PERKs) processed by the Department of Forensic Sciences and the Office of the Chief Medical Examiner;
- (c) Number of Physical Evidence Recovery Kits (PERKs) that convert from a non-report to a report to law enforcement;
- (d) Number of cases of sexual assault of minor victims or survivors that are reported to the Metropolitan Police Department, number of forensic interviews conducted, the rate of warrant presentation and other case outcomes, the prosecution and court case outcomes for all cases involving a minor victim or survivor, including distinctions between cases that converted from a non-report to a law enforcement report, non-acute cases in which a Physical Evidence Recovery Kit (PERK) was not appropriate and/or not completed for any reason, and acute cases that in which a Physical Evidence Recovery Kit (PERK) and a report to law enforcement were made simultaneously.
- (e) Number of mandatory reports made to the Child Family Services Agency (CFSA), including those cases that included parental notification, and including all case outcomes and resolutions;
- (f) Number of minor victims and survivors of sexual assault who presented to Children's National Medical Center and MedStar Washington Hospital Center for sexual assault; and
- (g) The identification of any unintended consequences and recommended changes.

- (7) This Task Force recommends the establishment of a Minor Victims Working Group that consists of members of the DC Sexual Assault Response Team, as statutorily established, and members of the DC Multidisciplinary Team, as statutorily established. This Working Group shall issue recommendations regarding the following: (a) implementation of the recommendations of this Task Force, to include recommended revisions to the Sexual Assault Victims' Rights Amendment Act of 2013 and the current authority of the District's Multidisciplinary Team to ensure that minor victims and survivors of sexual assault are afforded all rights pursuant to these recommendations; (b) payment for medical forensic exams and other medical services which exempt the minor victim or survivor from using a parent or guardian's insurance plan; and (c) how minor victims and survivors of violence can access systems of care in the District without parental notification. This Task Force recommends that the Minor Victims Working Group be chaired by the Independent Expert Consultant and shall issue recommendations no later than January 1, 2017. This Task Force further recommends that the rights and procedures recommended under this Task Force Report with regard to minor victims and survivors of sexual assault be implemented no later than October 1, 2018.

## **6. SUMMARY AND CONCLUSIONS**

Moving forward with any of the recommendations provided in our report, the Task Force asks that the Council be cognizant of the significant funding that implementing the recommendations would require and ask that no organization is placed in undue burden by lack of funding to implement any legislated changes. In particular, the credentialing and training of advocates, advocate expansion and need for full time staff to manage the complaint process should be taken into consideration.

The Sexual Assault Victims Rights Amendment Act Task Force appreciates the opportunity to provide these important recommendations to the District of Columbia

Council and looks forward to working on the implementation of any adopted recommendations.

**Respectfully submitted:**

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Robert Alder, Commander, Metropolitan Police Department

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Nikki Charles, MA, Co-Executive Director, Network for Victim Recovery of DC

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Barbra Chikowore, RN, SANE-A

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Heather DeVore, MD, Executive Director, DC Forensic Nurse Examiners

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Cortney Fisher, JD, PhD, Deputy Director, Office of Victim Services and Justice Grants

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Rose Gordy, LICSW, Deputy Director, Safe Shores – The DC Children’s Advocacy Center

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Sherelle Hessel-Gordon, Executive Director, District of Columbia Rape Crisis Center

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Amy Loudermilk, MSW, Associate Director of Government Affairs, The Trevor Project

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Nelly Montenegro, Esq., Staff Attorney, American Bar Association Commission on Domestic and Sexual Violence

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Elisabeth Olds, Sexual Assault Victims’ Rights Amendment Act Independent Expert Consultant

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Michelle Palmer, LICSW, Executive Director, Wendt Center for Loss and Healing

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Jennifer Pollitt-Hill, MSW, Executive Director, Hope Works (Howard County, Maryland)

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Jennifer Schweer, LPC, Georgetown University Health Education Services

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Tonya Turner, Esq., Trial Attorney, Office of the Attorney General

